



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Richard J. Sullivan, Treasurer
Laffey US Senate
P.O. Box 8510
Cranston, RI 02920

JUN 21 2007

RE: MUR 5750
Laffey US Senate

Dear Mr. Sullivan:

On May 25, 2006, the Federal Election Commission (the "Commission") notified Laffey US Senate (the "Committee") and you, in your official capacity as treasurer, of a complaint alleging that you violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you with a copy of the complaint.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission on May 30, 2007, found reason to believe that the Committee and you, in your official capacity as treasurer, violated 11 C.F.R. § 110.6(c)(2). At the same time, the Commission found no reason to believe that the Committee and you, in your official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b and 11 C.F.R. § 104.11(b). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. We look forward to your response.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures

Designation of Counsel Form
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Laffey US Senate and Richard J. Sullivan, in his official capacity as Treasurer MUR: 5750

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Chafee for Senate. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL SUMMARY AND LEGAL ANALYSIS

A. Failure to Disclose Conduit Information

Laffey US Senate received \$366,378 in earmarked contributions from Citizens Club For Growth ("CCFG") between October 1, 2005, and March 31, 2006.¹ In the Laffey committee's 2005 Year-End and 2006 April Quarterly reports, Laffey US Senate disclosed the individual contributors' names and other information, but the disclosure reports did not identify the contributions as having been received through CFG as the conduit. Laffey US Senate admitted in its response to the complaint that it did not identify CFG as the conduit, but stated that it knew that CFG was disclosing the contributions in its disclosure reports. Laffey US Senate also stated that it would file amended reports to disclose CFG as the conduit, which it did about one month after receiving notice of the complaint.

The Commission's regulations require the recipient of earmarked contributions to identify the individual contributor's information and also the identity of the conduit. 11 C.F.R. § 110.6(c)(2). Because Laffey US Senate failed to identify CFG as the source of \$366,378 in

¹ On April 3, 2007, Citizens Club for Growth notified the Commission of its name change.

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earmarked contributions, there is reason to believe that Laffey US Senate and Richard J. Sullivan, in his official capacity as Treasurer, violated 11 C.F.R. § 110.6(c)(2).

B. Alleged Failure to Disclose Disbursements

The complaint alleges that Laffey US Senate failed to disclose certain disbursements for mailings and printing. Under the Act, each report filed by a political committee must disclose the total amount of all disbursements made by the committee. 2 U.S.C. § 434(b)(4). The basis for the allegation is an April 25, 2006 news story in which Laffey US Senate's campaign manager reportedly stated that the campaign had spent \$69,549 on five direct-mail pieces. The complainant notes that the Committee's disclosure reports through March 31, 2006 showed only about \$20,000 in disbursements associated with mailings, and infers, based upon the news story, that the balance of the \$69,549 was not properly disclosed. In its response to the complaint, Laffey US Senate states that its disclosure reports through March 31, 2006 did not fail to disclose the remaining balance because it "did not receive invoices from its direct mail vendor exceeding the total of \$18,256 until after March 31, 2006."

The complaint provides no information to support an inference that the Committee incurred \$69,529 in disbursements for mailings before April 1, 2006, and there is nothing in the Committee's disclosure reports that bolsters this inference. Moreover, although the Committee's response to the complaint raises the question of whether the Committee understood that its disclosure obligation would have been triggered by the date the disbursements were incurred, rather than the date the invoices were received, *see* 11 C.F.R. § 104.11(b), the news story itself, which is the entire basis for the complaint, offers the reasonable possibility that the Committee

incurred the disbursements at issue between April 1 and April 25, 2006 – after the covered period for the Committee’s 2006 April Quarterly Report.²

Because the complaint does not provide a sufficient basis for an investigation, there is no reason to believe that Laffey US Senate and Richard J. Sullivan, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.11(b).

C. Alleged Corporate Contributions

The complaint alleges that American Labor Services, Inc. (“ALS”), made a prohibited corporate “expenditure or contribution” to Laffey US Senate in the form of a letter on corporate letterhead signed by ALS president Vincent Indeglia and distributed to all ALS employees.³ Specifically, the complainant alleges that the letter, which was attached to the complaint, expressly advocated the election of Stephen Laffey, was coordinated with his campaign, and/or was used to develop a voter list that was provided to Laffey US Senate.⁴

In the letter, after criticizing Laffey’s primary opponents on immigration issues, Indeglia endorses Laffey’s candidacy, stating, in pertinent part:

There is only one politician in Rhode Island who is fighting hard to allow people to become legal resident aliens and citizens if they should so choose and that is Mayor Stephen Laffey. . . . I am helping Mayor Laffey to get elected to the United States Senate so that he can make sure the right laws get passed on this issue. I need your help to do this.

² Laffey US Senate’s next report, the 2006 July Quarterly Report, discloses approximately \$150,000 in disbursements related to mailings.

³ ALS, a small corporation in Providence, is a jobs placement agency for blue-collar workers. According to Commission records, ALS does not have a separate segregated fund.

⁴ The complaint in MUR 5750 also alleges “unlawful coercion of employees by Mr. Indeglia on Mr. Laffey’s behalf” but presents no facts to support the allegation. Because this assertion does not provide sufficient information to infer or support an allegation that the Act may have been violated, it will not be addressed.

The letter then requests that the reader provide to either one of two ALS employees the name, address and phone number of every Hispanic citizen he or she knows who is not registered to vote so that they may be registered as Republican voters.

ALS and Indeglia submitted separate responses to the complaint. Indeglia states that he drafted the letter on his own time and made between 50 and 100 copies at his office. Indeglia argues that he was expressing his personal opinion regarding immigration issues and the candidates for Senate in Rhode Island, and that he identified himself as president of ALS in the letter so that readers would have a way to contact him if they wanted to discuss the letter. He claims that he did not distribute the letter to "all ALS employees" as alleged but rather placed the stack of letters on the front counter in ALS's lobby, apparently with the intent that they would be available to employees and the public, and did not distribute the letter in any other manner. He also claims that after the letter received some negative publicity, he retrieved the 25 or so copies that had not been taken and never created nor provided a voter list to the Laffey campaign.

The complaint alleges that because Indeglia held a fundraising event for Laffey, he must have a "close relationship" with the campaign, and, therefore, the Commission should investigate whether Indeglia coordinated the letter with Laffey US Senate. While Indeglia acknowledges he hosted a fundraiser for Laffey US Senate around the same time as the letter, he claims that the ALS letter was not connected to the fundraiser, and that he never spoke to anyone on the Laffey campaign about the letter. In an affidavit attached to Laffey US Senate's response, Laffey's campaign manager states that Indeglia drafted and circulated the letter without any involvement or encouragement, direct or indirect, from the Laffey campaign.

In its response, ALS claims that the letter was a personal letter prepared by Indeglia without its consultation or consent. ALS further claims that Indeglia "has a great deal of

authority,” and that it is not unusual or against company policy for him to use office equipment to draft personal letters. ALS does not address the allegation of coordination with the Laffey campaign.

The Act prohibits corporations from making contributions and expenditures in connection with any federal election. 2 U.S.C. § 441b(a). The Act defines contribution or expenditure to include “anything of value” to any candidate. 2 U.S.C. § 441b(b)(2).

Although Indeglia and ALS contend that the letter is Indeglia’s and not ALS’s, the letter is written on corporate letterhead; it was signed by Indeglia as president of ALS; copies were made in ALS’s office using ALS equipment; it was available to the general public in ALS’s lobby; and it appears to ask readers to provide identifying information, to be used for voter contact purposes, to two ALS employees. It thus appears that the letter constitutes corporate activity.⁵ Although ALS could have permissibly disseminated the letter to ALS’s restricted class – its executive and administrative personnel – placing the letter in a public location made the letter available to the general public, or at least to ALS customers and employees outside the restricted class. *See* 11 C.F.R. § 114.3(a)(1).

Whether ALS violated section 441b(a) depends upon whether the costs associated with the letter resulted in an in-kind contribution to Laffey US Senate, through coordination between Indeglia and the campaign, and, in the absence of coordination, whether the costs constitute a prohibited corporate expenditure by expressly advocating the election or defeat of a clearly identified candidate. To determine whether a communication is coordinated and, thus, a contribution to the candidate, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the

⁵ Letters written on corporate letterhead at the expense of the corporation supported conclusions of corporate activity in other enforcement matters. *See, e.g.*, MUR 4538 (Boston Capital Corp.), MUR 5020 (Atlantic City Showboat, Inc.), MUR 5573 (Westar Energy, Inc.).

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communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. *See* 11 C.F.R. § 109.21(a).

The first prong is clearly met as ALS paid for the letter. With respect to the content prong, the letter is not an electioneering communication, and there is a substantial question as to whether it constitutes a public communication as defined in 11 C.F.R. § 100.26, which includes "any other form of general public political advertising." If the letter does not constitute a public communication, then the content standard is not met. *See* 11 C.F.R. § 109.21(c)(1-4). This question, however, need not be answered because the conduct prong is clearly not met on this record.

The only fact regarding conduct alleged by the complainant is that Indeglia hosted a fundraiser for Laffey US Senate and, therefore, Indeglia and Laffey must have a close relationship. Even if true, a close relationship would not by itself meet any of the six conduct standards,⁶ and is too attenuated and speculative to support an inference that the parties engaged in coordination. Moreover, both Indeglia and Laffey US Senate deny coordinating the letter, and Laffey US Senate submitted an affidavit from its campaign manager stating that the campaign had no direct or indirect involvement in the production or distribution of the letter. Balancing the complaint's speculative allegation, the respondents' denials, and the absence of any other available information, there is no factual predicate to investigate whether Laffey US Senate

⁶ The conduct standards are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee or independent contractor; and (6) dissemination, distribution, or republication of campaign material. 11 C.F.R. § 109.21(d).

received a prohibited in-kind corporate contribution in the form of a coordinated communication.

In addition, according to Indeglia, no one responded to Indeglia's request for voter names, he never created a "voter list," and Laffey US Senate confirmed that it never received a voter list from ALS or Indeglia. Thus, there is no basis to investigate whether the Committee received an in-kind contribution in the form of a voter list. Therefore, there is no reason to believe Laffey US Senate and Richard J. Sullivan, in his official capacity as Treasurer, violated 2 U.S.C. § 441b by accepting a prohibited corporate contribution in the form of a coordinated communication or voter list.

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